

Message

From: Holmes, Carol [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A63F745584114AE9B119547A4DC845FD-HOLMES, CAROL]
Sent: 2/21/2019 5:27:18 PM
To: Miles, James [miles.james@epa.gov]
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Feel better!

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

From: Miles, James
Sent: Thursday, February 21, 2019 12:26 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

I think that's a good idea. I'm going to recommend that Tony goes just in case. FYI, I'm not feeling well so I am teleworking.

From: Holmes, Carol
Sent: Thursday, February 21, 2019 12:26 PM
To: Miles, James <miles.james@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

OK, thanks. I may come just in case, if that's OK with you?

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Washington, DC 20460
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From: Miles, James
Sent: Thursday, February 21, 2019 12:23 PM
To: Holmes, Carol <Holmes.Carol@epa.gov>
Cc: Presler, Amos <presler.amos@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Per Rosemarie's direction, only if she takes up our offer to discuss.

From: Holmes, Carol
Sent: Thursday, February 21, 2019 12:20 PM
To: Miles, James <miles.james@epa.gov>
Cc: Presler, Amos <presler.amos@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Is this on the agenda for this afternoon? Thanks!

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Office of Civil Enforcement (MC 2241A)
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Washington, DC 20460
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From: Miles, James
Sent: Thursday, February 21, 2019 12:15 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Holmes, Carol <Holmes.Carol@epa.gov>; Presler, Amos <presler.amos@epa.gov>; Baney, Tony <Baney.Tony@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Gardner, Geraldine <Gardner.Geraldine@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Susan –

Please find attached the briefs on the Third Circuit's jurisdiction in the matter of Hazelton Creek. Our OECA attorney is out of the office this week, but our technical expert is available to answer any questions you might have.

James

From: Miles, James
Sent: Wednesday, February 20, 2019 2:27 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Holmes, Carol <Holmes.Carol@epa.gov>; Presler, Amos <presler.amos@epa.gov>; Baney, Tony <Baney.Tony@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Gardner, Geraldine <Gardner.Geraldine@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Hi Susan,

We are updating you on the status of the enforcement matter concerning Hazelton Creek Properties, Moosic, in Pennsylvania. OGC discussed the case with OCSPP this morning, and Alex Dunn has a call scheduled with the Region 3 RA this afternoon at 4pm to discuss it as well. It is our understanding that you will be invited to participate in that call.

Procedural Status

Attorney Client / Ex. 5

Substantive Background: use versus disposal of PCBs:

Attorney Client / Ex. 5

OGC provided some helpful regional briefing material (attached). We wish we could have provided you more background in advance of this afternoon, but OCE staff can be brief you further at tomorrow's OCE Weekly.

James Miles

Acting Associate Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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1200 Constitution Ave., NW
Washington, DC 20460
202.564.5161
miles.james@epa.gov

Begin forwarded message:

From: "Saenz, Diana" <Saenz.Diana@epa.gov>
Date: December 20, 2018 at 6:28:22 PM EST
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Sullivan, Greg" <Sullivan.Greg@epa.gov>
Cc: "Miles, James" <miles.james@epa.gov>, "Werner, Jacqueline" <Werner.Jacqueline@epa.gov>, "Presler, Amos" <presler.amos@epa.gov>
Subject: RE: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Susan – Here is a procedural update on the Hazelton Creek filing [TSCA/ PCBs]:

Hazelton Creek Properties, Moosic, Pennsylvania, filed a petition dated 12/5/18 for review with the U.S. Court of Appeals for the Third Circuit. The filing requests review of what the petitioner labels a “final agency action” in the form of a Notice of Noncompliance and Information Request.

The scheduling order required a government response by Thursday, December 20th, but DOJ filed an unopposed motion for extension of time to respond by January 8th. The motion has not yet been granted, but the clerk advised DOJ to proceed as if it will be granted.

Attorney Client / Ex. 5

Prior to the filing, the region met with attorneys for Hazelton. The Region also received a letter in response to the NON, detailing the petitioner’s potential arguments/defenses. Bethany Fisher is the OGC attorney and Cheryl Jamieson is the regional attorney. OGC has also secured a DOJ attorney.

We will provide you with more information in early January and will be available if you would like to discuss this during the first week of January.

Thank you,
Diana

Diana J. Saenz
Acting Director
Waste and Chemical Enforcement Division
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Phone: (202) 564-4209
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Saenz.Diana@epa.gov

From: Sullivan, Greg
Sent: Monday, December 10, 2018 11:45 AM
To: Saenz, Diana <Saenz.Diana@epa.gov>; Miles, James <miles.james@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Please reach out to region 3.

From: Bodine, Susan
Sent: Monday, December 10, 2018 10:12 AM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

Attorney Client / Ex. 5

Susan

From: Beck, Nancy
Sent: Monday, December 10, 2018 8:00 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Wright, Peter <wright.peter@epa.gov>
Subject: FW: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

FYI

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
beck.nancy@epa.gov

From: Grant, Brian
Sent: Monday, December 10, 2018 7:18 AM
To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Mottley, Tanya <Mottley.Tanya@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Fisher, Bethany <fisher.bethany@epa.gov>
Subject: NEW LITIGATION -- TSCA [Hazelton Creek Properties v EPA (3rd Circ. No. 18-3665)]

On December 5, Hazelton Creek Properties, located in Moosic, PA, filed a petition for review under TSCA section 19(a) in the US Court of Appeals for the Third Circuit challenging a Notice of Noncompliance (NON) issued by EPA Region 3. The NON asserts that placement of PCB materials on the site property at levels over 2 ppm, in compliance with a Pennsylvania State permit and Pennsylvania policy, constitutes a violation of the EPA TSCA PCB regulations, and cautions that further receipt by the company of such materials may result in EPA enforcement. The Notice states that "No corrective action is necessary by your company at this time".

We will contact DOJ to have an attorney assigned and work with Region 3 ORC on this. Please let us know if you have any questions.

Brian Grant

EPA Office of General Counsel
Pesticides and Toxic Substance Law Office
202-564-5503